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9 *Appearing In Propria Persona*

10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF ARIZONA**

12 In Re Bard IVC Filters Products
13 Liability Litigation

No. MD-15-02641-PHX-DGC

14 **BCM's MOTION AND**
15 **MEMORANDUM IN SUPPORT**
16 **TO FILE EXHIBITS TO**
17 **AFFIDAVIT UNDER SEAL**

(Assigned to the Honorable David G.
Campbell)

18 Comes now the Law Offices of Ben C. Martin and the law firm of
19 Martin|Baughman (herein collectively referred to as "BCM"), and submits this
20 Motion and Memorandum in Support to File Exhibits to Affidavit Under Seal, and
21 in support thereof would respectfully show the Court as follows:

22 The Affidavit of Ben C. Martin provides the factual basis for BCM's Motion
to Reduce and Exempt Client Recoveries from Common Benefit Fee and Expense
Assessment ("BCM's Motion"), and the Exhibits to the Affidavit reveal the
identities of BCM's clients – including clients who never filed a lawsuit against
Defendants. Although "access to judicial records is not absolute," parties seeking to

1 seal a judicial record must satisfy the “compelling reasons” standard.¹ Compelling
2 reasons to seal records exist when the records: (1) “could be a vehicle for improper
3 purposes, such as the use of records to gratify private spite, promote public scandal,
4 circulate libelous statements, or release trade secrets;”² (2) contain “information
5 about proprietary business operations, [or] a company’s business model or
6 agreements with clients;”³ and (3) reveal “sales figures, advertising numbers, and
7 strategy information.”⁴

8 Here, the Exhibits to the Affidavit of Ben C. Martin should be filed under
9 seal for each of the three compelling reasons articulated by courts in this Circuit.
10 Under the first prong, the facts in the Exhibits could be a vehicle for improper
11 purposes because they reveal the number and identities of people who have settled
12 their claims with Defendants, including those who never filed a lawsuit against
13 Defendants. Public availability of the above information permits improper use: (1)
14 by an industry competitor to gratify its spite against Defendants or Plaintiffs’
15 counsel; (2) by media to promote public scandal against medical devices, Plaintiffs’
16 counsel, or the BCM clients identified in the Exhibits; and/or (3) by litigants and
17 litigators to circulate libelous statements against law firms or BCM’s clients who
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19 ¹ *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006).

20 ² *Id.* at 1179.

21 ³ *Selling Source, LLC v. Red River Ventures, LLC*, 2:09-CV-01491-JCM, 2011 WL
22 1630338 (D. Nev. Apr. 29, 2011).

⁴ *JL Bev. Co. v. Beam, Inc.*, No. 2:11-cv-00417-MMD-CWH, 2013 U.S. Dist.
LEXIS 35370, at *10 (D. Nev. 2013), *rev’d on other grounds*, *JL Bev. Co., LLC v.*
Jim Beam Brands Co., 828 F.3d 1098, 1101 (9th Cir. 2016).

1 may have achieved less (or more) success against Defendants. Accordingly,
2 compelling reasons support filing the Exhibits under seal.

3 Under the second prong, the Exhibits should be sealed because they reveal
4 BCM's agreements with specifically identified clients, who have not filed a lawsuit
5 against Defendants. Those identities, while necessary and sufficient to justify the
6 relief sought by BCM's Motion, serve no other legitimate purpose when publicly
7 disseminated. To the contrary, maintaining the identities of BCM's clients private –
8 especially those who never filed a lawsuit against Defendants – allows BCM and its
9 clients to benefit from their agreements without fear of public disclosure or future
10 harassment. Moreover, BCM's clients have an interest in not having their individual
11 litigation, injury, and settlement status publicly revealed. Accordingly, compelling
12 reasons support filing the Exhibits under seal.

13 Additionally, the Ninth Circuit has observed “the public policies that support
14 the right of access to dispositive motions, and related materials, do not apply with
15 equal force to non-dispositive materials.”⁵ Here, the Exhibits support a non-
16 dispositive motion, which will not impact the public's understanding of the claims
17 against Defendants in the MDL or the final resolution of those claims. Accordingly,
18 the Court should permit BCM to file the Exhibits to the Affidavit of Ben C. Martin
19 under seal.

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⁵ *Kamakana*, 447 F.3d at 1179.

WHEREFORE, PREMISES CONSIDERED, the Court should grant this Motion in its entirety, permit BCM to file the Exhibits to the Affidavit of Ben C. Martin under seal, and provide BCM with all such other and further relief to which it may show itself justly entitled.

RESPECTFULLY SUBMITTED this 25th day of January, 2022.

/s/ Ben C. Martin

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of January, 2022, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing.

/s/ Ben C. Martin

Ben C. Martin